

Senate Environment, Conservation & Tourism

AMENDMENT NO. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1135 House Bill No. 1745

by deleting the definition of “environmental audit” in Section 2 in its entirety and by substituting instead the following definition:

() “Environmental audit” means a voluntary, comprehensive evaluation or review of one (1) or more facilities, or an activity at one (1) or more facilities to identify technical and/or legal issues relative to environmental compliance status and strategies, regulated by the Tennessee environmental laws or permits, or the federal, regional or local counterpart or extension of such laws, or of compliance programs or management systems related to such facility or activity. An environmental audit may be conducted by the owner or operator, by the owner’s or operator’s officers, agents or employees, or by independent contractors. Such audit shall be a planned, scheduled event and shall be evidenced by written documentation. Once initiated, the environmental audit shall be completed within a reasonable period of time in order to qualify for the protection provided by this act. Nothing in this section shall be construed to authorize continuous, uninterrupted environmental audits engaged in solely for the purpose of evading the requirements of this act under the facts and circumstances of each situation.

AND FURTHER AMEND by adding the words and punctuation “and labeled ‘environmental audit report’” following the word “audit” at the end of the first sentence in Section 2 under the definition of the term “environmental audit report”.

AND FURTHER AMEND by inserting the following sentence as a new third sentence in the definition of “environmental audit report” in Section 2:

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To qualify for protection afforded under this act, each environmental audit report outlining environmental compliance violations must contain a compliance implementation plan to correct the violations.

AND FURTHER AMEND by adding the word and punctuation “permits,” after the word and punctuation “laws,” in subdivision (1) of Section 2 under the definition of “environmental audit report”.

AND FURTHER AMEND by adding the following new subdivision (2) under the definition of “environmental audit report” in Section 2 and by renumbering the subsequent subdivisions accordingly:

(2) Information or documents necessary for regulatory activity conducted by the Department of Environment and Conservation so long as such information or documents are not prepared for the sole purpose of an environmental audit. Nothing in this act shall limit or restrict in any way documentation and reporting necessary for regulatory activity conducted by the Department of Environment and Conservation;

AND FURTHER AMEND by adding the following new definition in Section 2:

() “Environmental compliance violation” means a violation or violations arising pursuant to Tennessee environmental laws or Tennessee criminal environmental laws.

AND FURTHER AMEND by deleting in Section 3 the language:

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An environmental audit report or any information derived from an environmental audit report shall be privileged, shall be immune from discovery and shall not be admissible as evidence or otherwise

and by substituting instead the following new language:

An environmental audit report or any information contained therein shall be privileged provided the report of information contained therein is labeled "environmental audit report" and shall be immune from discovery and shall not be admissible as evidence or otherwise

AND FURTHER AMEND by deleting subdivision (1) in subsection (a) of Section 4 in its entirety and by substituting instead the following new subdivision (1):

(1) The environmental audit report, or any part of it, is intentionally disclosed by authority of the party requesting the preparation of the environmental audit report to another person or entity, other than an employee of the owner or operator, not bound to maintain it in confidence, or if provided as part of a voluntary disclosure as outlined in Section 7 of this act; or

AND FURTHER AMEND by adding the following new sentence at the end of subdivision (3) in subsection (a) of Section 4:

Fraudulent use shall include, but shall not be limited to, activity wherein a person learns of an environmental compliance violation and subsequently conducts an

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environmental audit to avoid criminal or civil sanctions resulting from that environmental compliance violation.

AND FURTHER AMEND by deleting subsection (a) in Section 7 in its entirety and by substituting instead the following new subsection:

(a) If any owner, operator or his agent makes a voluntary disclosure of an environmental compliance violation to the Tennessee Department of Environment and Conservation, or to an agency having a responsibility to administer or enforce the Tennessee environmental laws then there is a rebuttable presumption that the disclosure is voluntary, and the person, persons and/or entity shall be immune from any state or local administrative and civil penalties associated with the issues disclosed and shall be immune from any state or local criminal penalties for acts associated with the issues disclosed unless said presumption is rebutted.

AND FURTHER AMEND by adding the word "written" before the word "disclosure" in Section 7, subdivision (b)(3).

AND FURTHER AMEND by deleting the words and punctuation "any other state, or local governmental agency," in Section 7, subsection (b), and by substituting instead the words and punctuation "to an agency having a responsibility to administer or to enforce the Tennessee environmental laws".

AND FURTHER AMEND by deleting subdivision (b)(4) in Section 7 in its entirety and by substituting instead the following new subdivision (b)(4):

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(4) The owner or operator making the disclosure initiates the appropriate effort to achieve compliance and corrects the noncompliance within time frames submitted and approved in a corrective compliance plan submitted to the Department of Environment and Conservation. For the purposes of this subparagraph, upon application to and at the discretion of the Tennessee Department of Environment and Conservation, or other agency having the responsibility to administer or to enforce Tennessee environmental laws, the time period for correcting the noncompliance may be extended if the plan time frames are not practicable. Where the noncompliance results from the failure to obtain a permit, appropriate efforts to correct the noncompliance may be demonstrated by the submittal of a complete permit application within a reasonable time. Review of a decision of the Tennessee Department of Environment and Conservation or other agency having the responsibility to administer or to enforce Tennessee environmental laws or any other entity subject to the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-101, et seq., as to timeliness or a permit application or extension of corrective action under this subparagraph shall be made to the appropriate regulatory board and pursuant to said Uniform Administrative Procedures Act; and